



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Mr. Alberto R. Gonzales
General Counsel
Office of the Governor
State of Texas
P.O. Box 12428
Austin, Texas 78711

OR95-1241

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36530.

The Governor's Appointment Office received a request for all records relating to the appointment of Brenda Arnett to the position of Texas Department of Commerce Executive Director and information on other people considered for this position. You seek to withhold from required public disclosure two documents, Department of Public Safety ("DPS") clearance forms, based on sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You suggest that disclosure of the requested information would violate the common-law right to privacy of the persons who are the subjects of the documents. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We do not believe the information on the DPS clearance form is highly intimate or embarrassing. Moreover, we believe the public has a legitimate interest in this information. Accordingly, the Office of the Governor may not withhold the DPS clearance forms based on section 552.101 of the Government Code in conjunction with the common-law right to privacy. *See generally* Open Records Decision No. 455 (1987).

The form contains criminal history record information ("CHRI"). You must not release this information. Gov't Code § 552.101. CHRI obtained from the DPS pursuant to statute is confidential and may only be disclosed in very limited circumstances. Gov't Code §§ 411.083, .084. Federal regulations governing the release of CHRI explicitly prohibit the confirmation of either "the existence or non-existence of CHRI to any person or agency that would not be eligible to receive that information itself." 28 C.F.R. § 20.21(c)(2). This ruling should in no way be interpreted as confirming the existence of such information in these records.

Section 552.111 of the Government Code excepts from required public disclosure:

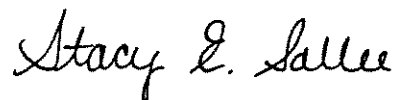
An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

The DPS clearance form contains no advice, recommendation, or opinion reflecting the policymaking process of the Office of the Governor. The information is purely factual. Therefore, the Office of the Governor may not withhold the DPS clearance form from required public disclosure based on section 552.111 of the Government Code.

In summary, with the exception of the CHRI that must be withheld from required public disclosure pursuant to section 552.101 of the Government Code, the requested DPS clearance forms must be released. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 36530

Enclosures: Submitted documents

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(w/o enclosures)